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No. 86-891

Supreme Court, U.S.

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JOSEPH E. SPANIOL, JR.
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In the
Supreme Court of the United States
October Term, 1986

MEAD DATA CENTRAL, INC., PETITIONER,

vs.

WEST PUBLISHING COMPANY, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO MOTION
FOR LEAVE TO FILE BRIEF AMICUS CURIAE

VANCE K. OPPERMAN

Counsel of Record

JOSEPH R. KERNAN, JR.

DIANE M. HELLAND

Counsel for Respondent

OPPERMAN & PAQUIN

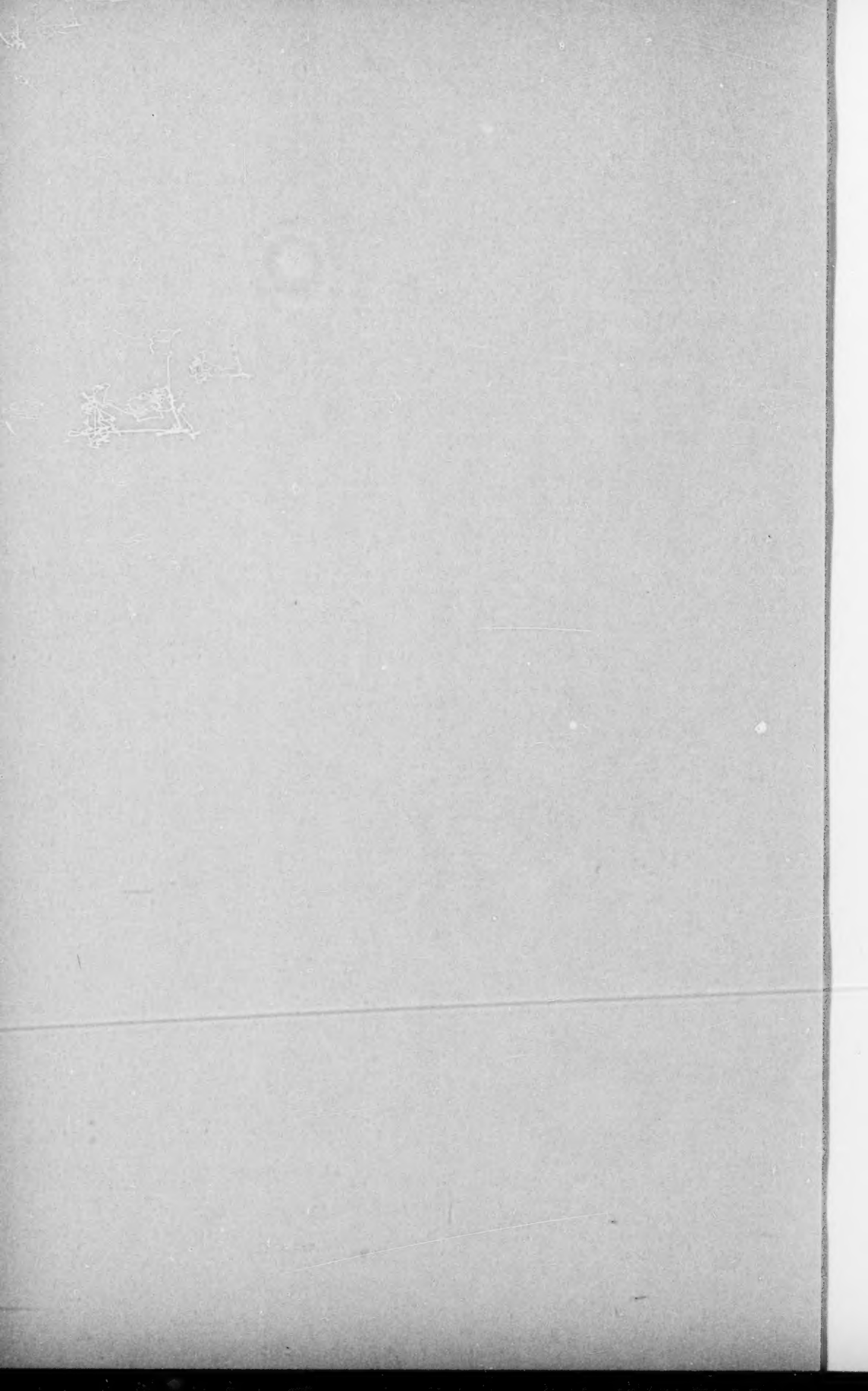
2200 Washington Square

100 Washington Avenue South

Minneapolis, Minnesota 55401

(612) 339-6900

January 22, 1987



West Publishing Company ("West")¹ emphatically opposes The Lawyers Co-operative Publishing Company's ("LCP") untimely "Motion for Leave to File Brief and Brief Amicus Curiae" filed January 15, 1987. Further, while it would be inappropriate for West to address the numerous distortions, material omissions and outright misstatements contained in the proposed brief itself, West notes and strongly objects to LCP's failure to disclose its affiliation and close economic association with the petitioner, Mead Data Central, Inc. ("MDC").²

West opposes LCP's Motion for Leave to File Brief on the following four grounds:

I. Both the motion and proposed brief were submitted in direct violation of this Court's Rule 36.1, twelve days *after* the rules required Respondent's Brief in Opposition to be submitted. Supreme Court Rule 36.1 clearly provides that a proposed *amicus curiae* brief as well as motion for leave to file it must be submitted "within the time allowed for filing of the . . . brief in opposition." Neither was.

¹ Respondent West Publishing Company is a privately held corporation organized under the laws of the State of Minnesota. It has no parent company or affiliates. The Foundation Press, Inc. is a subsidiary of West Publishing Company which is not wholly owned.

² On information and belief, LCP and MDC are partners or joint venturers in, among other ventures, Veracorp., the supplier of serveral computer-assisted legal research services, including Veralex. A skeptic might conclude that LCP's proposed brief is no more than an attempt by its "partner," MDC, to submit yet another reply brief of its own.



II. LCP's motion was not accompanied by West's written consent as favored by Rule 36.1. In fact, when LCP sought West's consent on January 15, 1987, West expressly refused. "A motion for leave to file such a brief when consent has been refused is not favored."³ Sup. Ct. R. 36.1

III. LCP failed to make a timely motion for an extension of time in which to file the instant motion and proposed brief. Sup. Ct. R. 29.2. LCP does not suggest any valid reason for this failure but lamely offers that it "did not trouble you with an earlier application for extension of time, which might have turned out to be moot." (Letter of Mr. Cumming to Mr. Stevas, January 15, 1987, p. 2) While LCP's motive—to spare the Court "trouble"—may be admirable, its sincerity is questionable. Moreover, the only conceivable basis upon which the request would have "turned out to be moot" was if West—in an astonishing reversal of the conventional posture of a respondent—had joined its adversary, MDC, in supporting the Petition for a Writ of Certiorari. This did not happen. Ordinary foresight could have predicted it.

³ With advance notice West might have consented to a well-reasoned brief that provided new views, insight, or perspective on the issues. LCP's tardy effort is not that; it is, rather, a repackaging of its "partner" MDC's shop-worn arguments and adds nothing except invective. Why LCP's counsel was unable to contact West's counsel to seek its consent sometime during the six weeks preceding January 15 is a mystery. The offices of Opperman & Paquin were open during regular business hours, at a minimum, for that entire period. At least one of the attorneys identified as counsel for respondent was available at all times.

IV. LCP offers no reason for the delay in filing the instant motion and proposed brief, except to say that until it received West's Brief in Opposition on January 9 (more than a week after it was submitted) it did not know whether it should seek to file an *amicus* brief or, if so, what it should say. Motion for Leave to File Brief, p. 3. In effect, LCP is requesting the right to file a reply brief—albeit a tardy one, even for a reply.⁴ In adopting its rules, this Court must have considered that many, if not most, would-be *amici* would like to submit briefs in the nature of reply briefs. Nonetheless, the Court chose not to provide such a privilege. See Sup. Ct. R. 36.1. Where this Court has clearly chosen to deny *amici* the privilege of submitting reply briefs, LCP should not be allowed to achieve—through sheer tardiness—the precise result the Court has chosen to deny.

For all of these reasons West opposes LCP's untimely Motion for Leave to File Brief.

Respectfully submitted,

VANCE K. OPPERMAN
JOSEPH R. KERNAN, JR.
DIANE M. HELLAND

Counsel for Respondent

OPPERMAN & PAQUIN
2200 Washington Square
100 Washington Avenue South
Minneapolis, Minnesota 55401
(612)339-6900

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⁴ MDC filed the real Petitioner's Reply Brief on January 9, 1987.